

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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EROL BELISLE,

Petitioner,

97 CV 5341 (SJ)

- against -

MEMORANDUM AND
ORDER

UNITED STATES OF AMERICA,

Respondent.

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A P P E A R A N C E S:

EROL BELISLE
Reg. # 44647-053
F.C.I. Allenwood
P.O. Box 2000
White Deer, PA 17887
Petitioner, Pro Se

ZACHARY W. CARTER
United States Attorney
One Pierrepont Plaza
Brooklyn, NY 11201
By: Andrew Hinton, Esq.
Assistant United States Attorney
Attorneys for Respondent

JOHNSON, District Judge:

Erol Belisle ("Petitioner" or "Belisle") has petitioned this Court for a motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. Petitioner believes his federal court conviction should be set aside because his counsel was ineffective for failing to (1) attack Petitioner's search and seizure; (2) object to the Probation Department's calculation of his criminal history category; and (3) raise with

the Court the Government's failure to file a prior felony information against him. Respondent moves to dismiss the petition as time-barred. For the reasons stated below, the petition is dismissed.¹

BACKGROUND

On September 8, 1994, Petitioner arrived at JFK International Airport on TWA flight 702 which had originated in California. A United States Customs canine officer and a narcotics detection dog were exposed to the luggage taken off of that flight. One black suitcase was positively identified as containing narcotics. Agents were deployed to the baggage pick up area where Petitioner was observed taking possession of the suitcase. After being detained and questioned about the contents of the suitcase, Petitioner consented to a search. Thirteen bottles, sealed with duct tape and enclosed in cardboard containers labeled "Listerine", were recovered and proven to be Phencyclidine ("PCP"). Petitioner pled guilty before this Court on April 26, 1995, to Possession with Intent to Distribute, a Class C Felony. Belisle was sentenced on June 16, 1995, to a prison term of 151 months, three years of supervised release and a special assessment of \$50.00. Petitioner did not appeal his conviction, nor did he file any collateral motions. On September 15, 1997, Petitioner filed the current petition.

¹ Rule 4(b) of the Rules Governing § 2255 Proceedings for the United States District Courts expressly states: "[i]f it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order for its summary dismissal"

DISCUSSION

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"),² which became effective on April 24, 1996, significantly amended 28 U.S.C. §§ 2244, 2253, 2254 and 2255. As a result, 28 U.S.C § 2255 now provides that federal habeas petitions challenging a judgment of a district court are subject to a one-year statute of limitations.³ The limitation period, with certain exceptions, begins to run on the date of which the judgment of conviction becomes final. See 28 U.S.C. § 2255. However, Congress did not provide specific guidelines regarding the retroactivity of this

² Pub. L. No. 104-132, 110 Stat. 1214 (1996).

³ 28 U.S.C. § 2255 states:

A 1-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of --

- (1) the date on which the judgment of conviction becomes final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

provision, thereby leaving the resolution of that issue to the courts.

The Court of Appeals of the Second Circuit has held that in cases where, as here, the judgment of conviction became final before the effective date of the AEDPA, the habeas petition may be filed outside the one-year period but within a "reasonable time" after April 24, 1996. See Peterson v. Demskie, 107 F.3d 92, 93 (2d Cir. 1997). Yet, it declined to set forth a precise definition of "reasonable time."

In Peterson, the court held that the petitioner's filing of his petition seventy-two days after the effective date of the AEDPA was timely. Id. at 93. However, the court stated that where a prisoner has had several years to bring a habeas corpus petition, it saw no need to accord a full year after the effective date of the AEDPA. Id. at 93. Further, the court cautioned that the reasonable time alternative should not be applied with undue rigor. Id.

In order to analyze the effect of the AEDPA on the instant case, it is necessary to reiterate the dates of the relevant events. As set forth above, Petitioner's proceedings ended on May 6, 1995, when this Court entered his conviction he failed to file a direct appeal within the limitations period. Yet, Belisle's petition was filed at the earliest on September 1, 1997,⁴ well over one year after the effective date of the

⁴ Where a prisoner is proceeding pro se, he is deemed to have filed his application when it is delivered to prison officials. Houston v. Lack, 487 U.S. 266, 273 (1988). Although the petition is not dated, the attached supplemental memorandum is dated September 1, 1997.

AEDPA and over two years after his conviction became final.

Petitioner has had several years to contemplate bringing a habeas corpus petition. However he neglected to do so. The Court notes that Petitioner filed his petition well outside of the statute of limitations time period to file a habeas petition. Furthermore, this Court finds that filing the present petition over one year after the AEDPA's effective date does not constitute reasonable time as contemplated in Peterson. Accordingly, the Court hereby dismisses the petition as time-barred. See Laza v. United States, 1998 WL 54639 (S.D.N.Y. 1998) (finding petition filed well over two years after petitioner's conviction became final and over one year after the effective date of the AEDPA untimely); Alzate v. United States, 1998 WL 54637 (S.D.N.Y. 1998) (dismissing petition under § 2255 filed over eleven months after effective date of AEDPA where petitioner did not appeal the judgment of conviction); Scott v. United States, 1998 WL 2828 (S.D.N.Y. 1998) (applying Peterson rule to petition under § 2255 and dismissing petition filed 299 days after effective date of AEDPA).

In addition, this Court declines to issue a certificate of appealability, as Petitioner has not presented a "substantial showing of the denial of a constitutional right." See Nelson v. Walker, 121 F.3d 828, 832 n.3 (2d Cir. 1997).

CONCLUSION

For the reasons set forth above, Belisle's petition for a writ of habeas corpus is dismissed.

SO ORDERED.

Dated: May 7, 1998
Brooklyn, New York


U.S.D.J.